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In re Application of
Nagai, Toshiaki
Application No.: 09/807,222
PCT No.: PCT/JP00/02970
Int. Filing Date: 10 May 2000
Priority Date: 08 November 1999
Attorney Docket No.: 109159
For: NETWORK TRADING SYSTEM AND
METHOD

DECISION ON
PAPERS UNDER 37 CFR 1.42

The is a response to the declaration filed 11 April 2001 which is being treated as a request under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 10 May 2000, applicant filed international application no.PCT/JP00/02970 which claimed a priority date of 08 November 1999 and designated the United States. A Demand was filed with the International Preliminary Examining Authority electing the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 17 May 2001.

On 11 April 2001, applicant filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a translation of the international application; and a declaration executed by Yoshiko Nagai for deceased inventor, Toshiaki Nagai.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

The declaration submitted on 11 April 2001 was executed by Yoshiko Nagai for deceased inventor, Toshiaki Nagai. However, the declaration does not state that the relationship of Yoshiko Nagai to the deceased inventor. Absent a statement that the signing heir is the sole heir or legal representative (executor) of the deceased inventor, the declaration cannot be accepted under 37 CFR 1.42. See also 37 CFR 1.497(b)(2).

In addition, it is noted that revised 37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

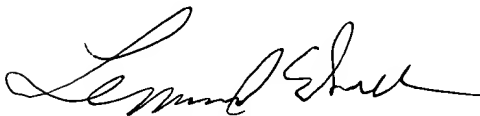
Pursuant to revised 37 CFR 1.497(b)(2), in addition to the residence, citizenship, and post office address of the deceased inventor, the declaration must also provide this information (residence, citizenship, and post office address) for the signing heir. The declaration filed on 11 April 2001 does not provide this information with respect to the signing heir. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

CONCLUSION

For the above reasons, the request for status under 37 CFR 1.42 is REFUSED.

Applicant is required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTH** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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